



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

Probate Status Hearing Re: Filing of Inventory and Appraisal

Age: 75		<p>BRUCE BICKEL was appointed Conservator of the Estate on 3-29-12 with additional powers under Probate Code §2591 pursuant to the order.</p> <p>Inventory and Appraisal Partial #1 was filed on 3-28-12 reflecting \$1,500,000.00 in real property in Los Angeles.</p> <p>At the hearing on 3-29-12, the Court set this status hearing for filing of the Final Inventory and Appraisal.</p> <p>Inventory and Appraisal Partial #2 was filed on 7-25-12 reflecting \$271,182.47 cash.</p> <p>Inventory and Appraisal Partial #3 was filed on 9-26-12 reflecting \$323,000.00 in real property in Kern and Los Angeles Counties.</p> <p>Status Report filed 7-27-12 indicates that in addition to the three (3) partial I&A referenced above, there is one (1) additional Final I&A expected, and Mr. Bickel expected it to be on file within 60 days.</p> <p>On 7-30-12, the Court continued the matter to 10-15-12 at the request of counsel.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Note: Kate Singh (niece) and Hubert Mitchell (brother) were appointed Co-Conservators of the Person on 3-29-12. Bruce Bickel was appointed Conservator of the Estate.</u></p> <p>1. <u>Need Final Inventory and Appraisal.</u></p> <p>2. Current bond is \$966,000.00 (increased after sale of real property pursuant to Minute Order 3-29-12). The Court may require clarification regarding the adequacy of this bond with reference to the I&A total once the Final I&A is filed.</p>
Cont. from 073012			
Aff.Sub.Wit.			
Verified			
Inventory			
PTC			
Not.Cred.			
Notice of Hrg			
Aff.Mail			
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters			
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order			
Aff. Posting			
Status Rpt	X		
UCCJEA			
Citation			
FTB Notice			

Reviewed by: skc
Reviewed on: 10-9-12
Updates:
Recommendation:
File 2 - Mitchell

Age: 5 months		Temporary expires 08/06/2012		NEEDS/PROBLEMS/COMMENTS:	
		ROSE MARIE BALLARD, maternal grandmother, is petitioner		<p>Continued from 8/6/12. ICWA form given to Petitioner. Matter continued. As of 10/9/12 the following issues remain:</p> <ol style="list-style-type: none"> 1. Need proof of personal service fifteen (15) days prior to the hearing of the Notice of Hearing along with a copy of the Petition for Appointment of Guardian or consent and waiver of notice or declaration of due diligence for: <ul style="list-style-type: none"> • Father (Robin Lee Gallegos) 2. Need proof of service fifteen (15) days prior to the hearing of the Notice of Hearing along with a copy of the Petition for Appointment of Guardian or consent and waiver of notice or declaration of due diligence for: <ul style="list-style-type: none"> • Paternal grandparents (Unknown) <p>Please see page 2</p>	
		Father: UNKNOWN (ROBIN LEE GALLEGOS)			
		Mother: LEANNE MARIE BALLARD, consents and waives notice			
		Paternal grandparents: Unknown			
Cont. from 070512, 080612		Maternal grandfather: Wess Ballard, served by mail on 05/15/2012			
	Aff.Sub.Wit.				
✓	Verified				
	Inventory				
	PTC				
	Not.Cred.				
✓	Notice of Hrg	W			
✓	Aff.Mail				
	Aff.Pub.				
	Sp.Ntc.				
	Pers.Serv.				
✓	Conf. Screen				
✓	Letters				
✓	Duties/Supp				
✓	Objections				
	Video Receipt				
✓	CI Report				
	9202				
✓	Order				
	Aff. Posting				
	Status Rpt				
✓	UCCJEA				
	Citation				
	FTB Notice				
<p>Petitioner alleges: Mother is currently on trial for allegedly stabbing her boyfriend. The mother asked the Petitioner to care for her child. The child has been in the care of the petitioner since shortly after his birth.</p> <p>Objection of Robin Lee Gallegos, Father, filed 06/25/2012 – The mother is currently incarcerated in Madera County jail. Father filed for custody in Madera County on 04/26/2012 prior to the filing of this guardianship petition. Mother responded in Father's petition and requested a blood test. He tested on 06/06/2012 and is awaiting the results. Mother is incarcerated for attempted murder and the Father is the victim.</p> <p>Court Investigator Samantha Henson's report filed 06/28/2012.</p> <p>Court Investigator Samantha Henson's report filed 07/31/2012</p>				<p>Reviewed by: KT</p> <p>Reviewed on: 07/30/2012</p> <p>Updates: 08/02/2012</p> <p>Recommendation:</p> <p>File 3 - Ballard</p>	

NEEDS/PROBLEMS/COMMENTS (continued):

3. Court Investigator report indicates that child may have American Indian Ancestry. Therefore, a *Notice of Child Custody Proceeding for Indian Child* (Form ICWA-030), must be served together with copies of petition and all attachments, including this form, on the child's parent; any Indian custodian; any Indian tribe that may have a connection to the child; the Bureau of Indian Affairs (BIA), and possibly the U.S. Secretary of the Interior, by certified or registered U.S. Mail, return receipt requested. (Please see Probate Code 1460.2, and CA Rules of Court 7.1015)
4. Per item 3 above, Petitioners will need to return the completed copy of the *Notice of Child Custody Proceeding for Indian Child* to the probate clerk. The probate clerk will then mail the notice to the required agencies.
5. After mailing, per item 4 above, need proof of service of notice, including copies of the notices sent and all return receipts and responses received, pursuant to Probate Code 1460.2(d).

Age:			NEEDS/PROBLEMS/COMMENTS:
DOD:			
Cont. from			
	Aff.Sub.Wit.		
	Verified		
	Inventory		
	PTC		
	Not.Cred.		
	Notice of Hrg		
	Aff.Mail		
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
	Letters		
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
	9202		
	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA	Reviewed by: JF	
	Citation	Reviewed on: 10/09/12	
	FTB Notice	Updates:	
		Recommendation:	
		File 7 - Lee	

Atty Magness, Marcus D. (for Dennis A. Maxwell – Administrator – Petitioner)

Atty Knudson, David N. (for Lucia Kennedy, Guardian ad Litem for Michael Coit, minor son - Objector)

Petition for Order Directing Transfer of Possession of Mobile Home to the Estate of
Marvin M. Coit [Prob. C. 850(a)(2)(D)]

DOD: 7-1-11		<p>DENNIS A. MAXWELL, Administrator with Will Annexed, is Petitioner.</p> <p>Petitioner states at the time of his death, Decedent owned a mobile home situated within one of his ranches, adjacent to his farm office and shop, in which he had allowed LUCIA KENNEDY to reside prior to his death. Decedent lived in a different home on a different parcel of property.</p> <p>Since his death, Ms. Kennedy has continued to reside in the home and has refused to sign a lease to the property and to allow access to the interior to inventory any of Decedent's personal property that may be contained therein.</p> <p>Marv Coit, Inc., a corporation owned entirely by the estate, operates out of the office and shop adjacent to the mobile home. The utilities of the mobile home are not separately metered and all utilities have been paid by the corporation. Ms. Kennedy has contributed no funds toward the payment of any gas, electricity, water, maintenance, or other costs associated with the mobile home.</p> <p>Ms. Kennedy is the mother of Decedent's youngest child, Michael, who does not reside there. Michael is currently a student at The Orme School, a private boarding school in Arizona.</p> <p>Ms. Kennedy purportedly claims a possessory interest in the mobile home. She apparently lived with Decedent at the mobile home on and off before his death, and now claims a right to remain there rent-free.</p> <p>Petitioner states Ms. Kennedy has no family allowance claim because she was not a spouse. Petitioner has offered to lease the mobile home to her, but this offer was rejected through her attorney. Without a lease, she has no rightful claim to possession.</p> <p>Petitioner requests an order under Probate Code §850 directing Ms. Kennedy to immediately turn over possession of the mobile home to Petitioner as Administrator.</p>	<p>NEEDS/PROBLEMS/COMMENTS: <u>Continued from 7-16-12, 8-20-12</u></p> <p>Note: Lucia Kennedy, represented by Attorney David Knudson, was appointed Guardian ad Litem on 9-29-11 for Michael Coit (Decedent's minor son with Ms. Kennedy).</p> <p>Note: Ms. Kennedy individually has also filed a Declaration Statement of Interest as an interested party.</p> <p>Note: Page 16C is Ms. Kennedy's (as GAL for Michael Kennedy) Petition for Order Setting Aside Exempt Personal Property to Minor Child; Setting Apart Probate Homestead and for Payment of Family Allowance for Minor Child.</p> <p>Note: The Orme School of Arizona filed a Creditor's Claim on 1-6-12 for \$34,664.00. The Administrator filed an allowance of that claim on 3-2-12.</p> <p>Note: Ms. Kennedy filed a Creditor's Claim on 4-9-11 for an amount "to be determined" including approx. 180 acres of real property in Firebaugh, which is developed to almonds and pistachio orchards, the value of the increase in real properties and other investments during their relationship together, for assets sufficient to provide support to herself and their son as promised by Decedent, for damages arising from the breach of Decedent's promises to provide and/or transfer property to her at his death, upon which she relied, and for attorney fees incurred in filing the claim. In the attachment, Ms. Kennedy describes her life together with Decedent since 1996. The attachment also contains reference to various trusts. The Administrator filed a Rejection of Creditor's Claim for "any amount" on 4-30-12.</p>	
Cont. from 071612, 082012				
<input type="checkbox"/>	Aff.Sub.Wit.			
<input checked="" type="checkbox"/>	Verified			
<input type="checkbox"/>	Inventory			
<input type="checkbox"/>	PTC			
<input type="checkbox"/>	Not.Cred.			
<input checked="" type="checkbox"/>	Notice of Hrg			
<input checked="" type="checkbox"/>	Aff.Mail			W
<input type="checkbox"/>	Aff.Pub.			
<input type="checkbox"/>	Sp.Ntc.			
<input type="checkbox"/>	Pers.Serv.			
<input type="checkbox"/>	Conf. Screen			
<input type="checkbox"/>	Letters			
<input type="checkbox"/>	Duties/Supp			
<input checked="" type="checkbox"/>	Objections			
<input type="checkbox"/>	Video Receipt			
<input type="checkbox"/>	CI Report			
<input type="checkbox"/>	9202			
<input checked="" type="checkbox"/>	Order			
<input type="checkbox"/>	Aff. Posting			
<input type="checkbox"/>	Status Rpt			
<input type="checkbox"/>	UCCJEA			
<input type="checkbox"/>	Citation			
<input type="checkbox"/>	FTB Notice			

PAGE 2

Lucia Kennedy, guardian ad litem of Michael Coit, son of decedent, objects.

Objector states Michael Coit resides in the mobile home and was not properly served. Petitioner alleges that Michael Coit does not reside there. That is incorrect. Even though Michael has been attending boarding school in AZ for the 2011-2012 school year, he has returned to the home for vacation and breaks, and upon the conclusion of the school year in May 2012, he has returned and is living in the residence, which is the only home he has known.

Probate Code §851 requires notice of hearing be personally served. It is unclear whether service was made by counsel on behalf of Lucia Kennedy individually, as guardian ad litem for Michael, or both. However, CCP 416.60 requires service on the minor as well, if over the age of 12. Michael is 15; therefore personal service is required.

Objector states the petition should be abated pending determination of the Petition for Homestead. Petitioner has filed a petition on behalf of Michael Coit to have the mobile home and surrounding property set aside as a probate homestead. It is anticipated that when a probate homestead is granted, Michael will live in the mobile home along with his mother.

Objector requests that this petition be denied or at least abated until a ruling on the probate homestead is made; and that upon presentation of a proper petition for payment of extraordinary compensation, the Court consider appropriate compensation for litigation counsel pursuant to applicable Probate Code and California Rules of Court.

The remainder of the Objection deals with the petition filed at Page 16B of this calendar and is addressed separately. See Page 16B.

DOD: 7-1-11		<p>DENNIS A. MAXWELL, Administrator with Will Annexed, is Petitioner.</p> <p>Petitioner states Decedent is survived by five (5) children by four (4) different women:</p> <ul style="list-style-type: none"> Decedent was married to Roberta E. Coit, who died in 1964. They had one daughter together, Kelly Coit. Next, Decedent married Tonja A. Coit. They had one daughter together, Amy Coit, before divorcing in 1975. In the 1980s, Decedent was engaged to Dayna Valadao, and they had two sons together: Mark Coit and Mitchell Coit. (<i>Mark Coit and Mitchell Coit filed Statements of Interest on 8-24-12</i>) In 1996, Decedent had one son, Michael Coit, with a woman named Lucia Kennedy. <p>At the time of his death, Decedent owned in excess of 1,000 acres of land, approx. 700 of which are planted with almonds and pistachios, and was also the sole shareholder (holding title in the name of the 1981 Trust), director and officer of Marv Coit, Inc., a corporation that provides custom farming services to Decedent's farmland.</p> <p>Petitioner is aware of four (4) separate estate documents executed by Decedent:</p> <ul style="list-style-type: none"> 1981 Trust – The Marvin M. Coit 1981 Revocable Living Trust Agreement 1981 Will – Pour-over to 1981 Trust 1986 Codicil – First Codicil to Will of Marvin M. Coit dated 1986 2005 Trust – Marvin M. Coit Family Trust First Amended Declaration and Agreement of Trust executed in 2005 <p>Petitioner has also located the following <u>unsigned</u> document:</p> <ul style="list-style-type: none"> 1998 Trust – The Marvin M. Coit Family Trust Declaration and Agreement of Trust that contains a "June __, 1998" date. <p>Decedent also had an irrevocable life insurance trust (the "ILIT") created in 1998.</p> <p style="text-align: center;">SEE ADDITIONAL PAGES</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Continued from 7-16-12, 8-20-12; set for trial 1-15-13.</u></p> <p><u>Note: An additional hearing is set for 10-22-12 re: Motion for Order Nunc Pro Tunc.</u></p> <p><u>Minute Order 7-16-12: Matter continued to 8-20-12. Counsel requests that the issue regarding the Instructions to Determine Controlling Testamentary Documents be set for trial with a 1-2 day estimate.</u></p> <p><u>A trial date of 1-15-13 is set, issue to remain on calendar for 8-20-12 for trial confirmation only.</u></p> <p><u>Minute Order 8-20-12: Counsel advises the Court that the summons and complaint were just handed this morning. Matter continued to 10-15-12 to be heard at the end of the calendar. Counsel to submit a stipulation for signature as indicated. Trial remains set for 1-15-13.</u></p> <p><u>See additional pages.</u></p> <p><u>Note: In addition to the children listed by Petitioner, a Statement of Interest was filed 7-12-12 by <u>Marva Critch</u> (Represented by Attorneys Gary Bagdasarian and Steven Shahbazian) states she is also a child of Decedent and entitled to notice and a share of the estate. Birth certificate attached.</u></p>
Cont. from 071612, 082012			
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified		
<input type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC		
<input type="checkbox"/>	Not.Cred.		
<input checked="" type="checkbox"/>	Notice of Hrg		
<input checked="" type="checkbox"/>	Aff.Mail w		
<input type="checkbox"/>	Aff.Pub.		
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.		
<input type="checkbox"/>	Conf. Screen		
<input type="checkbox"/>	Letters		
<input type="checkbox"/>	Duties/Supp		
<input checked="" type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
<input type="checkbox"/>	Aff. Posting		
<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		

PAGE 2

Petitioner states that while Decedent created at least one trust during his lifetime, the only asset transferred into such trust(s) was 100% of the issued and outstanding stock of Marv Coit, Inc. His remaining assets were not assigned into the trust and remained in Decedent's name.

With this petition, Petitioner seeks instruction from the Court concerning a number of issues that derive from ambiguities in Decedent's estate planning documents; from questions concerning the expenditure of estate funds to pay for one of Decedent's son's private boarding school and the impact that a claim filed against the estate by or on behalf of such son may have on such payments; and Petitioner seeks authority to pay extraordinary attorneys fees to defend the estate against a lawsuit filed against Decedent before his death. The easiest issue will be addressed first:

Petition for allowance of extraordinary compensation to attorneys for Administrator:

Petitioner states prior to Decedent's death, he was sued by **Lucy Knoeffler** in 10CECG04227. Decedent was, and is, represented by Patrick Gorman, Esq., of Wild, Carter & Tipton. The case is now active and a trial date is fast approaching. Petitioner requests an order from this Court authorizing payment of legal fees incurred in that action.

On 2-1-12, Petitioner served notice on Ms. Knoeffler of her need to timely file a creditor's claim in this estate. The time to file a claim expired on 4-1-12.

On or about 3-28-12, Ms. Knoeffler filed what appears to have been a claim in 10CECG04227, but she did not file a claim in this probate proceeding.

Counsel wrote to her advising her that she had failed to timely file a claim on 4-13-12. No further communication has been received from Ms. Knoeffler.

Petitioner has received an invoice from Wild, Carter & Tipton for fees incurred for services rendered in April 2012, including attendance at mandatory settlement conference and work on a motion for judgment on the pleadings that will be filed as a result of Ms. Knoeffler's failure to timely file a claim. Probate code §10811 provides that extraordinary compensation may be paid for extraordinary services by the attorney for the personal representative in an amount the court determines just and reasonable. There is no question that defending the Administrator and Estate in litigation commenced prior to Decedent's death are legal services extraordinary in nature.

Declaration of Patrick J. Gorman requests \$1,179.00 as just and reasonable compensation. Petitioner requests Court approval to pay this invoice and for instructions concerning a mechanism for monthly approval of invoices for such continued service to avoid doubling the cost of such legal services vis-à-vis Court filing fees.

SEE ADDITIONAL PAGES

PAGE 3

Petition for Instructions to Determine Controlling Testamentary Document(s):

Petitioner states the 1981 Will and the 1986 Codicil contain language revoking prior wills/codicils; however, neither the 1981 Trust, 1998 Trust, nor 2005 Trust contain revocation language.

Decedent's testamentary instructions designate beneficiaries as follows:

- **1981 Trust** divides into as many equal shares as there are children, which shares are to be held in trust until the children reach age 30. (That would mean 20% each for Kelly, Amy, Mark, Mitchell, and Michael, with Kelly and Amy receiving their shares outright due to their ages, and the rest held in trust until age 30.)
- **1981 Will** gives all Decedent's tangible property to his children in equal parts, with the residue pouring over to the trustee of the 1981 Trust, as it is amended through the date of Decedent's death.
- **1986 Codicil** amends the 1981 Will by adding two gifts for Decedent's then-fiancé, Dayna Valadao – specifically a home in Hollister and \$150,000.00 cash.
- **1998 Trust [not executed]** gives Ms. Valadao \$250,000.00 with the residue to be distributed to Amy, Mark and Mitchell. Kelly and Michael were left nothing under this instrument.
- **2005 Trust** Section 4.2 provides that the beneficiaries are 25% each to Amy, Mark, Mitchell and Michael. Kelly is left nothing under this instrument.

Pursuant to Section 8.2, each of the named beneficiaries is to receive ½ of their respective share if or when they attain the age of 30 and the balance if or when they attain the age of 35. Under this 2005 Trust, only Amy would receive her distribution immediately. Mark, Mitchell and Michael are all under 30.

- **ILIT** – Amy is the trustee of the ILIT and the beneficiaries are Amy, Mark and Mitchell. Neither Kelly nor Michael is a beneficiary under that document.

Examiner's Note: Kelly and Amy are over 35, Mark and Mitchell are between 18 and 30, and Michael is a minor. Lucia Kennedy was appointed as Guardian ad Litem for Michael in this estate on 9-29-11.

Examiner further notes that notes that Marva Critch, who has filed a Statement of Interest, may also be included as a child under the 1981 Will and 1981 Trust; however, any determination regarding the trust need to occur in a separate trust case, as noted at NEEDS/PROBLEMS/COMMENTS.

Petitioner states Probate Code §21102(a) provides that the intention of the transferor as expressed in the instrument controls the legal effect of the dispositions made in the instrument. When interpreting, the court must be guided by certain principles. Questions of interpretation must lay with the document itself. Petitioner references Probate Code §§ 21120, 21121, 21122, and *Ike v. Doolittle* (1998) 61 Cal.App.4th 51, 73-74 (only where the foregoing rules of interpretation fail will the Court look to extrinsic evidence to resolve ambiguities).

SEE ADDITIONAL PAGES

PAGE 4

Petition for Instructions to Determine Controlling Testamentary Document(s) (Continued):

Petitioner states it is clear that Decedent's testamentary intent evolved over the years between this various documents. In 1981, all children were treated equally. In 1986, he added gifts for Ms. Valadao (Mark and Mitchell's mother). In 1998, he decided not to leave Kelly or Michael anything, but continued to recognize and increased the gift to Ms. Valadao. By 2005, however, he deleted the gift to Ms. Valadao from his trust and added Michael as a beneficiary. Based on documents discovered to date, it is not clear whether the 1998 instrument was ever executed, or whether it was intended to amend the 1981 Trust or create a new trust that supersedes it. The 2005 Trust is clearly intended as an amendment, *but of which trust?*

The only will that appears to have been executed was the 1981 Will, as amended by the 1986 Codicil.

Both the 1981 Will and the 1981 Trust were executed 10-1-81. Thus it is clear that Decedent intended that his probate estate pass to the 1981 Trust, as it was amended before his death. If the 1998 Trust instrument and/or the 2005 Trust instrument created a trust that supersedes the 1981 Trust, then that trust would receive no assets and the Decedent's testamentary intent will be thwarted. If the 1998 Trust instrument and/or the 2005 Trust instrument amend the 1981 Trust, then the Decedent's testamentary intent will be carried out.

Steven J. Roth, an experienced estate planning attorney and CPA, was the attorney retained by Decedent to amend his estate plan in 1998. According to **Fred Sprinz**, Decedent's financial advisor and insurance agent, Mr. Roth was supposed to prepare a document to amend the 1981 Trust. Mr. Roth prepared the ILIT and the 1998 Trust instrument and met with Decedent on 6-9-1998. At the meeting, the ILIT was executed, but the 1998 Trust was not. See declarations.

Examiner's Note: *Mr. Roth's declaration indicates he was not aware of the 1981 Trust when he prepared the 1998 Trust, and it is his understanding that the 2005 Trust amended the 1998 Trust. However, Mr. Sprinz' declaration indicates it was his understanding that Mr. Roth was to prepare documents amending Decedent's prior estate plan, which would be the 1981 Trust.*

Regarding Michael (born in 1996): Petitioner states Decedent was unsure if Michael was his son, as evidenced by the 1998 Trust instrument, which did not leave Michael anything. This led to paternity testing in 1999.

Petitioner states the most plausible inference from these facts is that because of the doubts harbored by Decedent about whether Michael was his son, he did not execute the 1998 Trust instrument, as that would have left Michael nothing. Under the 1981 Trust, by contrast, if Michael did turn out to be his son, he would receive a full share.

Petitioner states it is basic estate planning practice that upon creation of an inter vivos trust, the attorney will create a will that causes any property not transferred during the testator's lifetime to the trust after death. However, where there is already a will that pours into that trust, there is no need to draft a new will. Decedent retained Mr. Roth to amend his existing trust. To carry out those instructions, Mr. Roth prepared both the 1998 Trust instrument and the 2005 Trust instrument. He did not draft a new will. Hence, either the 1998 Trust instrument and the 2005 Trust instrument were intended to amend the 1981 Trust instrument or Mr. Roth made a fundamentally estate planning mistake.

SEE ADDITIONAL PAGES

Petition for Instructions to Determine Controlling Testamentary Document(s) (Continued):

By 2005, Decedent was satisfied that he was Michael's father and had developed a relationship with him; however, he still did not want Kelly to receive any share of his estate. Therefore, he directed that Mr. Roth revise the draft 1998 Trust instrument resulting in the 2005 Trust instrument, which was then executed. See Sprinz declaration.

Because the 1998 Trust was not signed, the 2005 Trust can only amend the 1981 Trust. Hence, the 1981 Will causes the probate estate to pour into the 1981 Trust, as amended by the 2005 Trust instrument. Mr. Roth's only mistake was failing to cross-reference the prior instrument in the latter – a mere scrivener's error.

1986 Codicil: The 1986 Codicil provides a specific bequest of real property and a pecuniary bequest for Decedent's then-fiancé Dayna Valadao. It appears that although they never married, they were still close when he prepared the 1998 Trust instrument that was never signed, because it gave her a larger gift despite the fact that he had fathered a child with Ms. Kennedy two years earlier.

Petitioner notes that at the time of his death, Decedent no longer owned the real property that was devised to Ms. Valadao in the 1986 Codicil; therefore, Petitioner requests a finding that it is adeemed pursuant to Probate Code §21102.

Petition to Determine Heirship pursuant to Probate Code §11700:

Given the various testamentary documents at issue, Petitioner requests that in addition to instructions regarding which testamentary documents control, that the Court issue an order determining the persons entitled to distribution of Decedent's estate.

Examiner's Note: *If this request regarding heirship is meant to determine the persons who will take under the various trust documents then such petition must be brought under a separate trust case pursuant to Probate Code §17000, etc., as noticing and other requirements are different. Trust matters are separate from estate matters, even if the issues overlap.*

SEE ADDITIONAL PAGES

PAGE 6

Petition for Instructions Regarding School Tuition:

Petitioner states that prior to Decedent's death, Decedent executed an "Enrollment Agreement" for the Orme School 2011-2012 academic year for Michael's tuition, room, and board, and paid a deposit. A Creditor's claim was timely filed for the balance, allowed, and paid. Tuition totaled \$40,835.00 for 2011-2012.

Michael is currently in his Freshman year, and Petitioner anticipates Michael will ask to attend The Orme School through graduation. Decedent did not execute any agreement to send Michael to The Orme School through graduation. Indeed, Decedent had told Petitioner that he was going to demand that Michael's mother pay ½ of this cost.

If the Court determines that the probate estate will pass to the 1981 Trust, without amendment, then Michael's share of such trust will be 20% of the residue of the probate estate, which would pass to a separate trust for Michael's benefit and the trustee will have the discretion to use it for his education, taking into consideration all other resources known by the trustee to be available to the child, per the 1981 Trust.

If the Court determines that the probate estate will pass to the 1981 Trust as amended by the 2005 Trust, then Michael's share will be 25% in trust; however, per the 2005 Trust, no principal or income from that trust can be distributed until Michael turns 30.

Petitioner anticipates that Ms. Kennedy will enroll Michael for the 2012-2013 school year and then demand that the probate estate pay 100% of the tuition. Rather than wait until this occurs, placing Michael in a precarious position that could result in dismissal for nonpayment, Petitioner requests instructions as follows:

- a) Should any estate assets be used to pay Michael's future tuition at The Orme School if Ms. Kennedy's Creditor's Claim is found to not constitute a contest of Decedent's Will (see below)?
- b) If so, what percentage should be paid by Ms. Kennedy?
- c) If so, should the share paid by the probate estate be charged as an advance against Michael's share of the residue of the estate, or must his brothers and sisters shares also bear the cost of paying for this rather extravagant private boarding school?

SEE ADDITIONAL PAGES

PAGE 7

Petition for Instructions Regarding Will Contest:

Ms. Kennedy filed a Creditor's Claim in this action in which she demands that she be distributed, free of trust, approx. 180 acres of land planted to pistachios (valued in the Inventory and Appraisal at \$2,185,000); an undetermined sum of money equal to the "value of the increase in the decedent's real properties and other investments attributable to her efforts and support;" for assets sufficient to provide support for herself and her son Michael; for damages for alleged breach of oral contract by Decedent; and for attorney fees and costs. The claim has been denied.

Petitioner states that presumably, Ms. Kennedy expects these assets would be distributed to her and Michael free of any estate tax burdens. Ms. Kennedy has appeared in this matter in her capacity as the Guardian of Michael's Estate [*Examiner's Note: Ms. Kennedy is Michael's Guardian ad Litem – there is no case or order appointing her as guardian of his estate.*] and has made the demands in the Claim on both her and Michael's behalf.

Pursuant to Probate Code §21310(a), a "contest" is "a pleading filed with the court by a beneficiary that would result in a penalty under a no contest clause, if the no contest clause is enforced." A "direct contest" is one that alleges that a probate instrument is invalid for various reasons. A no contest clause in a probate instrument "shall be strictly construed." (§21312).

Petitioner states a creditor's claim can be a "contest" that triggers a no contest clause. *Colburn v. Northern Trust Co.* (2007) 151 Cal.App.4th 439, 447.

The 1981 Will and 1981 Trust contain no contest clauses that are broad and encompass more than standard direct contests to the instrument, defining a "contest" as including filings that seek to alter/impair/set aside the provisions of the instruments.

Ms. Kennedy's Creditor's Claim seeks to have a substantial portion of the estate diverted to her and Michael. Indeed, the land she demands represents approx. 16.5% of the value of the estate. This is directly contrary to the language of the instruments, which provide nothing for Lucia.

If Lucia filed the Creditor's Claim in her capacity as an individual, then she was acting on Michael's behalf when she seeks additional funds for Michael, which, under the 1981 Will and 1981 Trust, would constitute a contest by Michael, and Michael would be entitled to take nothing under either instrument.

In either case, counsel who represents Ms. Kennedy in her capacity as Guardian ad Litem of Michael in this action believes there is not conflict of interest in filing this claim, as he is the one who represents Ms. Kennedy in connection with the Creditor's Claim. This can only be true if the claim was filed on Michael's behalf.

In order to determine whether any share of the probate estate can be used to pay Michael's tuition, the Court must first determine whether the Creditor's Claim is a direct or indirect contest by Michael of the 1981 Will and the 1981 Trust, as amended, if applicable.

Petitioner also filed two Requests for Judicial Notice regarding Ms. Kennedy's appointment as GAL and Creditor's Claim with reference to Evidence Code §§ 451, 452, and 453.

Summons was served on Attorney David Knudson for Ms. Kennedy with reference to this matter.

Examiner's note: Rejection of Creditor's Claim was filed on 4-30-12.

SEE ADDITIONAL PAGES

PAGE 8

Petitioner seeks an Order:

1. Allowing Petitioner to pay extraordinary compensation to his attorneys in connection with the defense of the Decedent and this estate in the Knoeffler litigation;
2. Determining which of the testamentary instruments control(s), and instructing Petitioner accordingly;
3. Determining and declaring the rights of all persons to Decedent's Estate, and all interests in the Estate, and determining to whom distribution of the Estate should be made;
4. Determining whether Ms. Kennedy's/Michael's creditor's claim violates the no contest provisions of the Decedent's operative estate planning documents; and
5. Instructing Petitioner concerning payment for Michael's potential continuation at The Orme School beyond this academic year.

The Proposed Order finds that:

- The Wild, Carter & Tipton invoice, along with future defense fees relating to that action, should be paid from the estate.
- The 1981 Will, as amended by the 1986 Codicil, is valid and constitutes Decedent's last will and testament.
- The 1981 Trust is a valid trust agreement.
- The 1998 Trust was never executed and is therefore not a valid testamentary instrument.
- The 2005 Trust is a valid testamentary document and serves as an amendment to the 1981 Trust.
- The 2005 Trust is the controlling document to the extent its provisions are consistent with the provisions of the 1981 Trust. To the extent its provisions are not inconsistent, the 1981 Trust is controlling.
- The 2005 Trust does not contain a no-contest clause, and as such the no contest clause in the 1981 Trust is controlling.
- Pursuant to the 1986 Codicil, Dana Valadao is entitled to receive certain real property and \$150,000.00. However, because the Decedent no longer owned that real property at his death, that gift is adeemed.
- Lucia Kennedy is the court-appointed Guardian ad Litem of Michael Coit. She filed a creditor's claim in that capacity on Michael's behalf.

The claim seeks to divert Decedent's assets to Ms. Kennedy and Michael COit in a manner inconsistent with the controlling testamentary instruments and constitutes indirect contest by Michael Coit. As a result, according to the applicable no contest language in the controlling testamentary documents, Michael Coit is entitled to inherit nothing from Decedent.

Because Michael Coit is entitled to inherit nothing, no portion of his future boarding school tuition should be paid from Decedent's estate.

SEE ADDITIONAL PAGES

PAGE 9

The Proposed Order orders that:

- *Petitioner shall pay Wild, Carter & Tipton and all future invoices shall be submitted to this Court on an ex parte basis without notice or need for a hearing, and shall be paid from the estate.*
 - *The creditor's claim filed by Lucia Kennedy constitutes an indirect contest by Michael Coit and he is entitled to inherit nothing.*
 - *Dayna Valadao is entitled to receive \$150,000.00.*
 - *Kelly Coit, Amy Coit, Mark Coit and Mitchell Coit are each entitled to one fourth (1/4) of Decedent's tangible personal property and the remainder shall then pour over in to the 1981 Trust*
 - *Amy Coit, Mark Coit and Mitchell Coit are each entitled to one third (1/3) of Decedent's Trust Estate, subject to age-based distribution procedure set forth in trust documents.*
-

Note: The following documents were filed 7-13-12 in objection:

- Objection to Petition for Order Directing Transfer of Possession of Mobile Home (Page 16A)
- Statement of Interest and Response to Petition to Determine Entitlement to Distribution (Heirship);
- Response to Petition for Extraordinary Attorney's Fees and Other Instructions
- Petition for Order Setting Aside Exempt Personal Property to Minor Child; Setting Apart Probate Homestead and for Payment of Family Allowance for Minor Child (Page 16C)

Objection states:

1. Respondent, as GAL for Michael, states Petitioner has no objection to payment of litigation counsel; however, the request does not comply with Probate Code § 10811 (b) or Cal. Rules of Court 7.7.02. No declaration by Patrick Gorman was attached. Respondent agrees that it would be prudent to eliminate successive and duplicative filing fees for payments on litigation expense; however, the petition does not propose any procedure.
2. Petitioner phrases his request as a petition for instructions to determine which of Decedent's estate documents control; however, this is not the proper subject of a petition for instructions. Probate Code § 9611 provides that a petition for instructions may be brought only when no other procedure is provided by statute. But it is clear that there are a number of statutory procedures, primarily in the **Trust law**, which can be availed of to grant relief – and appropriate procedural safeguards should not be subsumed in the interest of expediency. A discussion of the various estate-planning documents is provided. Respondent states that it is anticipated that extrinsic evidence will be necessary to resolve these issues, which will require discovery, and trial if no agreement is reached.
3. Respondent opposes the proposed distribution set forth in the petition. Respondent believes based on review of the documents that Decedent intended his real property to be held in and administered under the terms of the 2005 Trust, but that all other assets, including the farming operation, be administered under the 1981 Trust. Respondent has and will seek to introduce additional evidence in support of this position.
4. Re Tuition: The issues raised are largely obviated by the recent decision that Michael will not be attending the Orme School for the 2012-13 school year. However, he will have support needs, which have been raised in the petition for family allowance (Page 16C).
5. The Creditor's Claim filed by Ms. Kennedy does not trigger the no contest clause. The claim was filed by Ms. Kennedy personally, not as GAL of Michael. The claim does not cause forfeiture of Michael's share. Probate Code § 21311 (c) states a no contest clause shall only be enforced if the no contest clause expressly provides for that application. The language is simply not there. The statutes contain no provisions dealing with "indirect contests." Thus Petitioner's allegation that the Court must determine whether the filing of a creditor's claim is a direct or indirect contest is specious. Rather than seeking to protect the interest of Decedent's son, Petitioner uses a "bootstrap" argument to try to defeat Michael's interest, raising serious questions about whether Petitioner is observing his duty as a trustee to treat all beneficiaries fairly and to act in their best interest.

SEE ADDITIONAL PAGES

PAGE 10

Respondent requests that:

- Upon presentation of a proper petition for payment of extraordinary compensation, the Court consider appropriate compensation for litigation counsel pursuant to Probate Code and Cal. Rules of Court;
- The Petition for Instructions be denied and appropriate proceeding be initiated to determine the validity of the trust instruments;
- The Court determine the appropriate distribution as evidenced by Decedent's estate planning documents and such extrinsic and additional evidence as may be presented;
- Any determination concerning payment for schooling be deferred and dealt with in the Petition for Family Allowance (Page 16C)
- The Court determine that the Creditor's Claim does not constitute a contest and the language of the trust does not expressly provide that the filing of a creditor's claim will be deemed a direct contest pursuant to Probate Code §21311(a)(3)

NEEDS/PROBLEMS/COMMENTS:

1. The original 1981 Will was never deposited with the Court. Only the original 1986 Codicil has been deposited.

For the 10-20-11 hearing on appointment, Examiner Notes noted that the original 1981 Will was not provided pursuant to Probate Code §8200, and noted that the petitioner had not petitioned for probate of a lost will pursuant to Probate Code §6124.

However, Examiner notes that the Amended Petition filed 9-7-11, although it referenced the 1981 Will and 1986 Codicil and requested appointment with will annexed, did not request that they be admitted to probate.

On 10-20-11, the Court granted the Petition and signed an Order Appointing Petitioner as "Administrator with Will Annexed;" however, the order does not admit the 1981 Will and 1986 Codicil to probate.

At this time, if the Court is now requested to admit the 1981 will to probate, the Court will readdress the issue of deposit of the original will pursuant to Probate Code §8201 (order to produce), or alternatively, require further information to make any findings necessary for probate of a lost will pursuant to Probate Code §§ 6124 (destruction with intent to revoke) and/or 8225 (admission of will to probate).

Note: Petitioner's Notice of Motion for Order Nunc Pro Tunc filed 9-14-12 regarding admission of the will to probate is set for hearing on 10-22-12.

2. The Court cannot make findings and orders with regard to Decedent's various trust instruments. This includes any findings of validity and heirship under those documents. In this estate matter, the Court is limited to determination of the controlling testamentary document(s) for the estate.

Therefore, the Court may be able to admit the 1981 Will and 1986 Codicil to probate subject to #1 above; however, any determinations with regard to trusts must be addressed separately under applicable code.

For Example: If the Court determines that *in this estate* the 1981 Will and 1986 Codicil are the controlling testamentary documents, and admits them to probate subject to #1 above, the parties would then file a separate petition in a separate trust matter, to determine the status of the 1981 Trust, since it is the beneficiary under the 1981 Will – whether it was amended or superseded by 1998 Trust or 2005 Trust, etc.

3. Statement of Interest filed 7-12-12 by Marva Critch (Represented by Attorneys Gary Bagdasarian and Steven Shahbazian) states she is also a child of Decedent and entitled to notice and a share of the estate. Birth certificate attached. Need proof of service of Notice of Hearing on Ms. Critch and her attorney.

(1) Petition for Order Setting Aside Exempt Personal Property to Minor Child and (2) Setting Apart Probate Homestead and (3) for Payment of Family Allowance for Minor Child

DOD: 7-1-11	LUCIA KENNEDY, Guardian Ad Litem of Michael Coit, Decedent's minor son, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
		<u>Continued from 8-20-12</u>
		Note: Pursuant to Probate Code §6523(a): "In selecting and setting apart the probate homestead, the court <i>shall consider</i> the needs of the surviving spouse and minor children, the liens and encumbrances on the property, the claims of creditors, the needs of the heirs or devisees of the decedent, <u>and the intent of the decedent with respect to the property in the estate and the estate plan of the decedent as expressed in inter vivos and testamentary transfers or by other means.</u> [Emphasis added.]
		Examiner notes that a trial has been set for 1-15-13 on the Administrator's petition to determine controlling testamentary documents and determine heirship (Page 16B of this calendar). Examiner notes that the outcome of that trial (for controlling <u>estate</u> documents, and then petition, hearing and outcome of <u>further hearing and/or trial regarding trust matters</u> may be pertinent to the Court's consideration of this petition.
Cont. from 082012	Petitioner states:	
Aff.Sub.Wit.	<ul style="list-style-type: none">Dennis A. Maxwell was appointed as Administrator with Will Annexed on 10-20-11. Bond of \$11,460,000.00 was filed and Letters issued on 12-12-11.	
Verified	<ul style="list-style-type: none">I&A reflects assets of \$13,257,744.58.	
Inventory	<ul style="list-style-type: none">Certain creditor's claims have been filed and the time for filing claims has passed.	
PTC		
Not.Cred.	Petitioner requests that the Court set aside to or for the benefit of Michael Coit the following property pursuant to Probate Code §6510:	
Notice of Hrg	<ul style="list-style-type: none">All household furniture, furnishings, clothing and personal effects of the decedent located in the residence at 534 N. Lyon in Firebaugh, including any personal property of the decedent stored in, on or around said residence including carpentry and other tools located in the garage, together with any and all other property that is or would be exempt from a money judgment as described in Probate Code §6510	
Aff.Mail	<ul style="list-style-type: none">All household furniture, furnishings, clothing and personal effects of the decedent located in that certain structure known as "the Shack" located on that certain property known as the "Hill Ranch" located in western Fresno County where Decedent stayed from time to time	
Aff.Pub.	Petitioner states the property consists of household furniture and furnishings of good quality which were used by Decedent. Petitioner is filing a petition for a probate homestead on behalf of Michael Coit, and said personal property will be needed in the complete and full use and enjoyment of the residence by the minor child.	
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
	<u>SEE ADDITIONAL PAGES</u>	
		Reviewed by: skc
		Reviewed on: 10-9-12
		Updates:
		Recommendation:
		File 16C - Coit

PAGE 2

Petitioner states: Petitioner, on behalf of Michael Coit, seeks probate homestead created in that certain property located at 534 N Lyon, which parcel consists of approx. 160 acres, a portion of which is planted with almonds and pistachios, and which parcel also contains offices and shop facilities used in Decedent's farming operation.

Located on said parcel is a double wide mobile home. From Michael's birth in 1996, this mobile home has been his residence. He attended school from 2010-2012 in Arizona, but at all times the mobile home remained his residence. He resided there with his mother Lucia Kennedy. Decedent Marvin Coit also resided in the mobile home much of that time.

As Decedent's only minor child, Michael is the only person for whom a probate homestead may be set aside. Decedent owned no other real property which is suitable for occupancy as a homestead.

Even though Michael attended boarding school the past two years, a decision was made not to return. It is intended that Michael will reside in the mobile home with his mother during the next school year and for the foreseeable future.

Petitioner Lucia Kennedy has resided in said mobile home with her son since his birth. Much of the time Decedent Marvin Coit resided there too. Such residence did not, and has not disrupted farming operations.

Decedent was not married at the time of his death. He had four other children, (Amy Coit, Kelly Maura, Mark Coit and Mitchell Coit. None of them were dependent on Decedent at the time of his death. Accordingly, Michael is the only person for whom a probate homestead may be set aside under Probate Code §6520.

Dennis Maxwell, the personal representative, has filed a petition for order directing the transfer of possession of the mobile home to the estate [Page 16A]. Petitioner has concurrently filed objections to that petition, including an objection that the mobile home is being sought as a probate homestead for Michael in this Petition.

The family allowance will not interfere with the administration of the estate – the I&A shows cash and liquid assets of more than \$2.2 million.

Michael is in need of and is entitled to a reasonable allowance from the property of Decedent's estate for his maintenance and support during the administration of the estate. Michael has no other property of his own from which income can be generated for his support.

Michael will not return to boarding school this year and it is intended that he will live on the ranch property in Firebaugh. As she did in the past, Michael's mother, Lucia Kennedy, plans to "home school" Michael, and has made arrangements through Central Valley Home School for the 2012-13 school year, which will include regular study and work under his mother's direction as well as group sessions 2-3 times a week in Kingsburg, CA to obtain certain college-preparatory subjects.

SEE ADDITIONAL PAGES

PAGE 3

Petitioner requests a total family allowance of \$6,700.00/month.

Michael's estimated monthly expenses are \$4,725.00 (details in petition). Petitioner states that if homestead is granted, no separate cash outlay for housing and other expenses will be necessary; however, the mobile home is in need of numerous repairs. If the repairs are provided by the estate, they need not be included in the family allowance. Otherwise, Petitioner will request \$500/mo for those items. Petitioner states that Michael may be able to be added to the business's health coverage. In addition, Petitioner states that Michael also anticipates the need for driving/vehicle/insurance expenses since he is now 15½ years old estimated at \$1,675/mo.

In addition, Michael is entitled to such allowance from the date of his father's death (7-1-11). Due to the delay in administration and the fact that Michael was attending boarding school, this was not previously requested. However, between July 2011 and May 2012, various expenses were incurred on Michael's behalf, including clothing, personal needs, travel to and from school, incidental school expenses, etc. Petitioner believes that \$5,500 or \$500/mo for that time frame is reasonable.

Michael is the sole individual entitled to a family allowance under PC 6540(a). His position as the only qualifying individual confers a special protection for him to receive this allowance from the estate. Cites provided. The fact that he is also a trust beneficiary does not extinguish this right.

The allowance is intended to be made in addition to, not in lieu of, his interest in the estate. Michael is eligible to receive the family allowance and his interest in the estate should not impact this right.

Petitioner requests attorney fees of \$2,500.00 for this petition plus reimbursement of \$435 filing fee.

Petitioner prays for an order:

- Setting aside personal property as described above
- Setting aside probate homestead as described above
- Family allowance of \$6,700/month commencing 6-1-12 until further order of the Court or final distribution
- Family allowance for 7-1-11 through 5-31-12 of \$500/month or an aggregate amount of \$5,500.
- Attorney fees and costs of \$2,935 plus such other amounts as may be incurred in this action

Note: Petitioner lists interested parties, but has not included Marva Critch, another daughter who has filed a statement of interest in this case. Continuance and further notice may be necessary.

Opposition was filed 5-15-12 by Administrator Dennis Maxwell. Objection states the request for probate homestead, the request for family allowance, and the request for attorney fees should be denied as prayed, with details outlined in the Opposition and reference to Probate Code §6544 re fees. Additional cites included.